

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED OF OMAHA LIFE INSURANCE
COMPANY, a Nebraska corporation,

Plaintiff,

v.

DOLORES M. AGUAYO and HILLARIE A.
BETHANCOURT and DENNIS LOPEZ, both
as Guardians of K.B., their minor son,

Defendants.

02:09-CV-01864-LRH-RJJ

ORDER

This is an interpleader action brought pursuant to Federal Rule of Civil Procedure 22 and 28 U.S.C. § 1335. Plaintiff United of Omaha Life Insurance Company (“United of Omaha”) has been dismissed from the action pursuant to stipulation (#44¹), leaving the conflicting claims of Dolores M. Aguayo (“Dolores Aguayo”) and Hillarie A. Bethancourt, as Guardian of K. B., her minor son (“Bethancourt”). Before the court are Bethancourt’s motion for summary judgment (#32), Aguayo’s opposition and cross-motion for summary judgment (#36-37), Bethancourt’s reply (#38) and motion to strike Aguayo’s cross-motion (#39), Aguayo’s opposition (#43), and Bethancourt’s reply (#45).

¹Refers to the court’s docket entry number.

1 **I. Facts and Procedural History**

2 United of Omaha commenced this interpleader action to resolve conflicting claims to
3 \$69,447.56 in proceeds due and owing under a group life insurance policy covering Wilson
4 Aguayo, Jr., who passed away on January 6, 2009. The policy was purchased by his employer,
5 Hard Rock Hotel, Inc., and is an employee benefit plan governed by ERISA, 29 U.S.C.
6 § 1002(2)(A). United of Omaha is the claims administrator under the policy. Doc. #20, Ex. 1 at 2.
7 The Hard Rock Hotel is the policyholder and plan administrator and is responsible for obtaining all
8 beneficiary designation forms from its covered employees. *Id.* In turn, the Hard Rock Hotel
9 contracted with Benefit Vision, Inc. (“BVI”) as a third-party administrator, charged with being the
10 custodian of records and handling all enrollment matters and beneficiary designations by Hard
11 Rock Hotel’s employees. Doc. #20, Ex. 4 at 2.

12 Wilson Aguayo enrolled in his employer’s group life insurance coverage in 1999 and
13 initially designated his mother Dolores Aguayo as the primary beneficiary and his daughter
14 Courtney A. Aguayo as contingent beneficiary. On December 12, 2008, Dolores and Courtney
15 Aguayo were removed as beneficiaries and K.B. was named as the sole beneficiary. K.B. is the
16 minor child of Hillarie Bethancourt, who was dating Wilson Aguayo at the time. The change was
17 made during the Hard Rock Hotel’s open enrollment period, during which time BVI was present in
18 Las Vegas to assist the hotel’s employees with enrollment matters and beneficiary designations.
19 Doc. #20, Ex. 5 at 2. In order to change a beneficiary, BVI required the employee to be present
20 with a BVI benefit enroller, who entered the change into a computer and provided the employee
21 with a confirmation. *Id.* BVI did not require a written form.

22 Following Wilson’s death, on January 29, 2009, Dolores Aguayo submitted to United of
23 Omaha a Proof of Death form and a Statement of Beneficiary form claiming entitlement to the
24 benefits under the policy. Doc. #20, Ex. 1 at 76-82. Also included was a letter from Dolores
25 Aguayo disputing the validity of the beneficiary designation of K.B. *Id.* at 80. Dolores wrote that
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1 Wilson decided to change his beneficiary designation “at the last minute due to his not being in the
2 right frame of mind,” that Wilson and Bethancourt broke up two weeks later, that Wilson voiced
3 his intent to change back the beneficiary designation but unexpectedly passed away before he was
4 able to do so, and that as the original beneficiary Dolores was “filing a rival claim.” *Id.*

5 On February 11, 2009, Bethancourt, on behalf of K.B., also submitted a Proof of Death
6 form and a Statement of Beneficiary form claiming entitlement to the benefits under the policy
7 based on Wilson Aguayo’s beneficiary designation at the time of his death. *Id.* at 84-93.
8 Bethancourt included a copy of an open enrollment confirmation from showing Wilson Aguayo’s
9 elections and designation of K.B. as beneficiary, as of January 1, 2009. *Id.* at 88.

10 Because Dolores Aguayo and Bethancourt were unable to reach an agreement regarding
11 how the life insurance benefits should be paid, on September 22, 2009, United of Omaha filed this
12 interpleader action and deposited \$69,447.56, the full amount of benefits, plus interest, into the
13 court’s registry. Doc. ##1-2. Pursuant to the parties’ stipulation, on August 26, 2010, the court
14 entered a judgment in interpleader dismissing United of Omaha from this action with prejudice and
15 awarding \$7,500 in attorney’s fees and costs to be paid out of the proceeds. Doc. #44.

16 On July 2, 2010, Bethancourt filed a motion for summary judgment, asserting that Wilson
17 Aguayo’s designation of K.B. as beneficiary is valid under either the policy terms or the doctrine
18 of substantial compliance and that Dolores Aguayo has no standing to contest the designation.
19 Doc. #32. The motion is supported by a statement of material facts and declaration of counsel with
20 exhibits. Doc. ##33-34. On July 26, 2010, Dolores Aguayo filed an opposition and cross-motion
21 for summary judgment, arguing that the designation of K.B. as sole beneficiary lacks sufficient
22 proof and is invalid. Doc. ##36-37. No separate statement of material facts or exhibits were
23 submitted in support of the opposition and cross-motion. On August 12, 2010, Bethancourt filed a
24 reply and moved to strike Dolores Aguayo’s cross-motion as untimely and as non-compliant with
25 Local Rule 56-1. Doc. #39. Dolores Aguayo then filed an opposition to the motion to strike, and
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Bethancourt filed a reply. Doc. #43, 45.

II. Legal Standard

Summary judgment is appropriate only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

The moving party bears the burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

To successfully rebut a motion for summary judgment, the non-moving party must point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a

1 genuine dispute; there must be evidence on which the jury could reasonably find for the plaintiff.

2 *See id.* at 252.

3 **III. Discussion**

4 Dolores Aguayo does not contend that effect should be given to Wilson's alleged intent to
5 re-designate Dolores as beneficiary prior to his death in January 2009. Instead, the sole dispute
6 between the parties pertains to whether the designation of K.B. as sole beneficiary in December
7 2008 was valid. The court will limit its analysis accordingly.

8 Bethancourt has produced the documents and affidavits evidencing that Wilson Aguayo
9 changed his beneficiary designation to K.B. on December 12, 2008, by meeting in person with a
10 BVI representative, who made the change by computer and issued a confirmation form to Wilson.
11 Dolores Aguayo has produced no evidence to the contrary and instead challenges the designation
12 of K.B. on the grounds that Wilson failed to comply with the terms of the policy governing
13 beneficiary designations. The policy states:

14 The beneficiary and mode of payment may be changed, subject to any restrictions or
15 limitations in this Policy. To make a change, written request should be sent to the
16 office where the beneficiary records are kept. If You do not know where the
17 records are kept, send the request to Us. When recorded and acknowledged by Us,
the change will take effect as of the date the request is signed. However, the change
will not apply to any payments or other action taken by Us before the request was
acknowledged.

18 Doc. #20, Ex. 1 at 53. Dolores Aguayo argues this language makes a written request and signature
19 mandatory, and that no evidence has been produced showing Wilson's compliance with these
20 terms. By contrast, Bethancourt argues that the use of the word "should" makes these procedures
21 permissive rather than mandatory, and that Wilson's designation of K.B. in person and by
22 electronic means with the assistance of a representative of the claims administrator was proper and
23 effective both under the terms of the policy and given the course of conduct of United of Omaha
24 and the Hard Rock Hotel in giving effect to beneficiary designations made by such means.

25 The court need not resolve whether Wilson Aguayo strictly complied with the terms of the
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1 policy in designating K.B. as beneficiary. Particularly in this case where the plan administrator
2 and insurer have already given effect to Wilson's request, the court also must give effect to his
3 change of beneficiary under the equitable doctrine of substantial compliance. The doctrine is
4 intended to give effect to an insured's intent to comply and necessarily allows less than strict
5 compliance with the terms of a contract. *BankAmerica Pension Plan v. McMath*, 206 F.3d 821,
6 828 (9th Cir. 2000); *Phoenix Mut. Life Ins. Co. v. Adams*, 360 F.3d 554, 565 (4th Cir. 1994). Thus,
7 the doctrine of substantial compliance applies even where the procedures set forth in a change of
8 beneficiary clause are written in mandatory terms. *See, e.g., BankAmerica*, 206 F.3d at 827-28
9 (applying the doctrine notwithstanding the use of "shall").

10 While the doctrine of substantial compliance exists under both Nevada law and federal
11 common law, in interpleader actions involving the effectiveness of a beneficiary designation under
12 an ERISA plan the forum state's doctrine of substantial compliance applies. *See id.* at 830
13 (holding that ERISA does not preempt California law); *Fortis Benefits Ins. Co. v. Johnson*, 966 F.
14 Supp. 987, 989-90 & n.3 (D. Nev. 1997) (Hagen, J.) (applying Nevada law in an interpleader
15 action brought by the insurer). Under Nevada law, substantial compliance will be found where one
16 party makes a substantial effort to comply with a contractual provision, and the party seeking to
17 enforce the provision has notice of the other party's efforts to comply and has obtained
18 substantially the intended benefit of the contractual provision. *Fortis*, 966 F. Supp. at 990-91.

19 Here, all three requirements are satisfied. First, the undisputed evidence establishes that
20 Wilson Aguayo made a substantial effort to comply with the policy requirements by meeting in
21 person with a representative of BVI, the third-party plan administrator and custodian of records,
22 and by having the changes made by electronic means. Second, the insurer, through the plan
23 administrator, had notice of Wilson's efforts to comply. And third, the insurer has obtained
24 substantially the intended benefit of the contractual provision, which is "to protect the insurance
25 company from the risk of double payment." *Id.* at 991. Indeed, the insurer and plan administrator
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1 waived strict compliance with the policy terms both by accepting Wilson's in-person change
2 request and by filing this interpleader action, which effectively disclaimed any interest in enforcing
3 the contract terms. *See id.* Thus, the court concludes that the requirements of substantial
4 compliance have been satisfied.²

5 **IV. Attorney's Fees**

6 Bethancourt requests an award of reasonable attorney's fees against Dolores Aguayo
7 pursuant to 29 U.S.C. § 1132(g)(1). That section of ERISA authorizes the court to grant
8 reasonable attorney's fees and costs to either party "[i]n any action under this subchapter . . . by a
9 participant, beneficiary, or fiduciary." *Id.* This interpleader action was filed by United of Omaha,
10 which is neither a participant, beneficiary or fiduciary within the meaning of ERISA. *Cripps v.*
11 *Life Ins. Co. of N.A.*, 980 F.2d 1261, 1265 (9th Cir. 1992). Furthermore, while Bethancourt and
12 Dolores each filed counterclaims against United of Omaha, those counterclaims have been
13 dismissed by stipulation and neither filed a claim against the other. Thus, the court concludes an
14 award of attorney's fees under § 1132(g)(1) is not authorized.

15 **V. Conclusion**

16 For the foregoing reasons, the court concludes that there is no genuine issue as to any
17 material fact and that Bethancourt, on behalf of K.B., is entitled to judgment as a matter of law.

18 IT IS THEREFORE ORDERED that Defendant Hillarie Bethancourt's Motion for
19 Summary Judgment (#32) is hereby GRANTED.

20 IT IS FURTHER ORDERED that Defendant Dolores Aguayo's Counter-Motion for
21 Summary Judgment (#37) is hereby DENIED.

22 IT IS FURTHER ORDERED that Defendant Bethancourt's Motion to Strike Defendant
23 Aguayo's Counter-Motion for Summary Judgment is hereby DENIED as moot.

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25 ²The result would be the same in this case even if the federal common law applied. *See id.* at
26 989 n.3.

1 IT IS FURTHER ORDERED that the clerk of court shall enter judgment in favor of
2 Defendant Hillarie A. Bethancourt, as Guardian of K. B., her minor son, and against Defendant
3 Dolores M. Aguayo, on the claim of entitlement to the interpleaded funds.

4 IT IS SO ORDERED.

5 DATED this 5th day of February, 2011.



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7 LARRY R. HICKS
8 UNITED STATES DISTRICT JUDGE
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